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United States Senate

WASHINGTON, DC 20510

Federal Communications Commission
Office of the Secretary

October 28, 2002

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

We write to urge the FCC to immediately complete consideration of WT Docket No. 02-276 and implement an opt-out regime for winning bidders in Auction 35, including a complete release from the rights and obligations concerning the bids of those companies making this election and a prompt return of their remaining deposits.

In December 2000 and January 2001, the FCC held an auction of PCS spectrum ("Auction 35"). The auction attracted a total of \$16.8 billion in bids, more than \$15.8 billion of which was for spectrum formerly held by NextWave. As is customary, the Auction 35 winning bidders made down payments equal to 20 percent of their bid amounts. In June 2001, the D.C. Circuit Court ruled that the FCC's cancellation of NextWave's licenses was unlawful under the Bankruptcy Code. This action rendered FCC's Auction 35 invalid. Given the court's decision, the FCC was unable to deliver licenses to the Auction 35 winning bidders, and instead, the FCC returned the licenses to NextWave. The FCC continued to hold the Auction 35 down payments in light of its appeal of the D.C. Circuit court decision to the Supreme Court.

Recognizing the financial difficulties faced by the wireless industry, in March 2002, the FCC returned a portion of the down payments, but kept 15 percent - more than half a billion dollars. However, we continue to be concerned as to carriers' ongoing contingent liability to pay their bid amounts totaling nearly \$16 billion on 10 days notice. In light of the market downturn, this financial obligation has adversely affected the financial position of these companies most of which are presently suffering under heavy debt loads, falling stock prices and declining revenues and most of which have already announced layoffs. Furthermore, the credit rating agencies have been downgrading affected companies and have the entire industry under review. Even more troubling is that the carriers indicate that this financial obligation adversely affects their capacity to serve the needs of their customers since it impedes the carriers' ability to take interim steps, such as building out their networks further or leasing spectrum from others, that may be urgently needed to improve service for its customers. At a time when the telecommunications industry is suffering its worst downturn in years, it does not make sound policy sense to hold carriers to

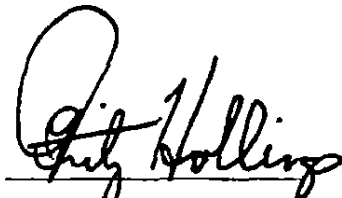
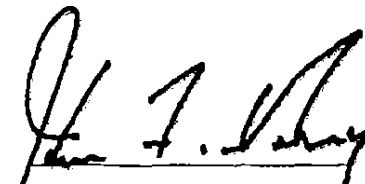

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billions in contingent liabilities when the government has not been able to deliver the licenses to the carriers and it is unclear whether the government ultimately will be able to do so.

For **these** reasons, we urge you to afford each winning bidder an opportunity *to* elect, without penalty or prejudice, **to** relinquish its right to spectrum **and** the corresponding licenses and to be relieved of all **further** obligations under Auction **35**. We further recommend **that you** promptly refund to the winning bidders who opt-out the full remaining amount of their deposits and down payments. If the FCC is ultimately victorious in the ongoing litigation and is in a position to deliver the licenses to **those who still** choose to remain obligated, such bidders would be required to pay the full amount of their bid in accordance with the FCC's existing regulations. We expect that those who elect to **terminate** their rights **and** obligations under Auction **35** will be free to pursue future opportunities to acquire spectrum and serve consumers.

Thank you for your consideration of our requests.

Sincerely,


Ernest F. Hollings
John F. Kerry
Sam Brownback